a distance. It is only when you get up close that the true dimensions of this monument come into full view. I have had that opportunity on the Volksmarch, with my family, to walk up and stand next to this monument and to have an appreciation for its true dimension and for what it means to my State of South Dakota and to the Native American culture.

The sculptor of this monument, Korczak Ziolkowski, had no formal training and originally came to South Dakota to assist Gutzon Borglum in the carving of Mount Rushmore. In 1939, Chief Henry Standing Bear invited him to construct another mountain monument, this one to honor a great Native American hero. However, it was not until June 3, in 1948, that the project was officially dedicated.

Crazy Horse, a great Lakota chief, was selected as the Native American hero worthy of the mountain monument because of his courage in battle, his visionary leadership, and his commitment to the preservation of the traditional Lakota way of life. The memorial was placed in the Black Hills of South Dakota because they are sacred to the Lakota people. While Crazy Horse was never photographed, the completed monument will feature a likeness of him riding a horse and pointing with his left hand out toward the Black Hills.

Ziolkowski, who worked tirelessly and without salary on the Crazy Horse Memorial until his death in 1982, believed in individual initiative and private enterprise and worked to build the memorial without any Federal funding. As my colleagues can see from the photo we have here, the face of Crazy Horse is complete, the rest of the mountain has been roughly blocked out, and efforts are currently focused on carving the horse's head.

While there is no way to predict the date of completion because of weather, financing, and the challenges of carving a mountain, Ziolkowski's wife Ruth, who is an amazingly determined woman, and his family, along with the help of thousands of donors and visitors, continues Ziolkowski's mission of honoring Native Americans through the construction of this monument.

Therefore, today I rise to honor the 60th anniversary of the Crazy Horse Memorial and send my best wishes to all those working to make Korczak Ziolkowski's vision a reality.

I thank the Senate for its adoption of the resolution, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican whip is recognized.

TAX POLICY

Mr. KYL. Mr. President, every now and then there is an article or an op-ed in the newspaper that you find compelling by its clear logic and you want to share it with your colleagues. I wish to do that today and at the conclusion of my remarks put the full text of this op-ed in the record.

Today's Wall Street Journal carried an op-ed by David Ranson called ''You Can't Soak the Rich.'' I find it compelling because of the proposals by some that we should raise the marginal income tax rates and thereby theoretically increase revenues to the Treasury. What Ranson points out is it is essentially a law of economics that raising tax rates not only does not bring in more revenue to the Treasury based on the historic record, but it can have precisely the opposite effect because it can harm the economy and, in fact, it is the growth in the economy that produces more revenue to the Federal Treasury.

Let me quote a couple of comments from his op-ed. He said:

> No matter what the tax rates have been, in postwar America tax revenues have remained at about 19.5 percent of GDP.

Now, there is another measure. If you go back somewhat less distance, the measure is about 1 percent less than that as a percentage of GDP, but the ratio remains the same and the point he is making remains the same, which is that raising tax rates does not raise revenue. In fact, raising tax rates can hurt the economy, which then reduces tax revenue.

There is a chart in this op-ed that makes the point. The Federal tax yield, which is revenues divided by the gross domestic product, has remained close to 19.5 percent, even as the top tax bracket was brought down from 91 percent to the present 35 percent. One would think that the difference between a 91-percent top marginal rate and 35 percent would represent a dramatic difference in revenues collected. In point of fact, it has not been. He points out why a little bit later in his op-ed. He says:

> The data show that the tax yield has been independent of marginal tax rates over this period, but tax revenue is directly proportional to GDP.

In other words, the strength of the economy.

He goes on:

> So if we want to increase tax revenue, we need to increase GDP.
>
> What happens if we instead raise tax rates? Economists of all persuasions accept that a tax rate hike will reduce GDP, in which case Hauser's Law—

The law he is citing here—

> says it will also lower tax revenue. That's a highly inconvenient truth for redistributive tax policy, and it flies in the face of deeply felt beliefs about social justice. It would surely be unpopular today with those presidential candidates who plan to raise tax rates on the rich—if they knew about it.

He goes on to answer the question I posed earlier: What makes this law work? I am quoting now:

> As Mr. Hauser said: ''Raising taxes encourages taxpayers to shift, hide and underreport income. . . . Higher taxes reduce the incentives to work, produce, invest and save, thereby dampening overall economic activity and job creation.''
>
> Putting it a different way, capital migrates away from regimes in which it is treated harshly, and toward regimes in which it is free to be invested profitably and safely. In this regard, the capital controlled by our richest citizens is especially tax-intolerant.

The point he is making is that if you are wealthy, you have the ability to move your income around, to hire accountants and tax lawyers to find ways to shield your income, and the bottom line is the Government never gets any more of it than if the rate remained at a lower level.

In fact, he points out that revenue collections by the Government have remained almost constant over this 40-year period and that their ratio to the GDP has remained almost constant; the point being that the revenue collected by the Government is most in relation to the state of the economy. It is mostly dependent upon the economy. As the economy grows, revenues to the Federal Treasury grow. As the economy slows, tax revenues slow, and that is exactly what we are seeing right now.

So we should take two important lessons from this. No. 1, in a time of economic downturn, which is what we are in right now, the last thing you would want to do is to raise tax rates because you are going to hurt the economy and you are not going to bring in any additional revenue. Secondly, this speaks to the point my colleague from Arizona, Senator MCCAIN, has been making, which is that, in the long term, what you want to do is reduce tax rates if you can—at least leave them where they are but not raise them—if you want to be fair both to the American family and help the economy grow and get us out of this economic downturn. Incidentally, that is what will produce the most revenue for the Federal Treasury to pay for all that the Congress and the President end up passing in legislation and passing on to American taxpayers.

So I ask unanimous consent to place this op-ed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, May 20, 2008]

YOU CAN'T SOAK THE RICH

(By David Ranson)

Kurt Hauser is a San Francisco investment economist who, 15 years ago, published fresh and eye-opening data about the federal tax system. His findings imply that there are draconian constraints on the ability of tax-rate increases to generate fresh revenues. I think his discovery deserves to be called Hauser's Law, because it is as central to the economics of taxation as Boyle's Law is to the physics of gases. Yet economists and policy makers are barely aware of it.

Like science, economics advances as verifiable patterns are recognized and codified. But economics is in a far earlier stage of evolution than physics. Unfortunately, it is often poisoned by political wishful thinking, just as medieval science was poisoned by religious doctrine. Taxation is an important example.

The interactions among the myriad participants in a tax system are as impossible to unravel as are those of the molecules in a gas, and the effects of tax policies are speculative and highly contentious. Will increasing tax rates on the rich increase revenues, as Barack Obama hopes, or hold back the economy, as John McCain fears? Or both?

Mr. Hauser uncovered the means to answer these questions definitively. On this page in 1993, he stated that ''No matter what the tax rates have been, in postwar America tax revenues have remained at about 19.5% of GDP.'' What a pity that his discovery has not been more widely disseminated.

The chart, updating the evidence to 2007, confirms Hauser's Law. The federal tax ''yield'' (revenues divided by GDP) has remained close to 19.5%, even as the top tax bracket was brought down from 91% to the present 35%. This is what scientists call an ''independence theorem,'' and it cuts the Gordian Knot of tax policy debate.

The data show that the tax yield has been independent of marginal tax rates over this period, but tax revenue is directly proportional to GDP. So if we want to increase tax revenue, we need to increase GDP.

What happens if we instead raise tax rates? Economists of all persuasions accept that a tax rate hike will reduce GDP, in which case Hauser's Law says it will also lower tax revenue. That's a highly inconvenient truth for redistributive tax policy, and it flies in the face of deeply felt beliefs about social justice. It would surely be unpopular today with those presidential candidates who plan to raise tax rates on the rich—if they knew about it.

Although Hauser's Law sounds like a restatement of the Laffer Curve (and Mr. Hauser did cite Arthur Laffer in his original article), it has independent validity. Because Mr. Laffer's curve is a theoretical insight, theoreticians find it easy to quibble with. Test cases, where the economy responds to a tax change, always lend themselves to many alternative explanations. Conventional economists, despite immense publicity, have yet to swallow the Laffer Curve. When it is mentioned at all by critics, it is often as an object of scorn.

Because Mr. Hauser's horizontal straight line is a simple fact, it is ultimately far more compelling. It also presents a major opportunity. It seems likely that the tax system could maintain a 19.5% yield with a top bracket even lower than 35%.

What makes Hauser's Law work? For supply-siders there is no mystery. As Mr. Hauser said: ''Raising taxes encourages taxpayers to shift, hide and underreport income. . . . Higher taxes reduce the incentives to work, produce, invest and save, thereby dampening overall economic activity and job creation.''

Putting it a different way, capital migrates away from regimes in which it is treated harshly, and toward regimes in which it is free to be invested profitably and safely. In this regard, the capital controlled by our richest citizens is especially tax-intolerant.

The economics of taxation will be moribund until economists accept and explain Hauser's Law. For progress to be made, they will have to face up to it, reconcile it with other facts, and incorporate it within the body of accepted knowledge. And if this requires overturning existing doctrine, then so be it.

Presidential candidates, instead of disputing how much more tax to impose on whom, would be better advised to come up with plans for increasing GDP while ridding the tax system of its wearying complexity. That would be a formula for success.

Mr. KYL. Mr. President, I urge my colleagues to review the op-ed and apply it to the lessons we have today. In fact, the legislation we will be taking up today increases taxes—increases the tax rate—by applying a 0.5-cent surcharge or surtax on the top marginal rate. This is going to be very destructive. Over 80 percent of the people who report that top marginal rate, report small business income. So we are going to be hurting the small businesses of this country, not the big businesses or the wealthy that the surcharge is intended to hit, and we will end up not increasing Federal revenues but actually decreasing them and hurting the economy in the process.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

JUDICIAL CONFIRMATIONS

Mr. HATCH. Mr. President, yesterday on the Senate floor the distinguished majority leader mentioned my name and repeated a claim about my service as chairman of the Judiciary Committee, which I once again am compelled to correct. He said: ''Sixty of President Clinton's nominees were denied hearings.''

In a letter to the distinguished minority leader and the distinguished ranking member of the Judiciary Committee dated April 30, 2008, he similarly stated that:

> Senator HATCH exercised the chairman's prerogatives freely during the years in which more than 60 of President Clinton's nominees were denied hearings or floor consideration.

The claim—and it has been repeated in various forms by others—is that all these nominees could have been confirmed but were not because I simply blocked them.

What is not mentioned is President Clinton came within seven of setting an all-time judicial appointment record while I was chairman. He was treated fairly. I had hearings and moved people to the floor that many on our side had real qualms about. It is true that approximately 60 of his judicial nominees were not confirmed, not in 1 year, as the distinguished majority leader said yesterday, but in all 8 years. They were not confirmed for a host of different reasons, most having nothing to do with the chairman's prerogatives.

President Clinton, for example, withdrew a dozen of those nominees himself—actually withdrew them. That was not my prerogative as chairman; it was his prerogative as President. These withdrawn nominees included a nominee to the U.S. District Court whose record as a State court judge in criminal cases was so troubling that prosecutors in her own State, led by a Democrat, opposed her. Instead of certain defeat on the Senate floor, the Republican leader at the time allowed President Clinton to withdraw her nomination. She was not denied a hearing; she had a hearing and was reported to the floor. She was not denied floor consideration; she was spared floor defeat.

The unconfirmed Clinton nominees included an appeals court nominee who, though he had raised millions for the Democratic Party, admitted in his hearing that he knew virtually nothing about such basic areas as criminal or constitutional law. President Clinton wisely withdrew him. These unconfirmed nominees included an appeals court nominee who had lied about his background, making claims that were politically potent but patently false. President Clinton withdrew him. Was he unconfirmed? Yes. Was he blocked by Republicans? No. These and others like them were not what some on the other side of the aisle have called pocket filibusters. They were not, as the distinguished majority leader has said, simply denied consideration at the chairman's prerogative.

The unconfirmed Clinton nominees include many who did not have the support of their home State Senators. Nominees in this situation did not receive hearings under the chairmen before me as well as those who succeeded me, including the current Democrat chairman who will not call them up if a home State Senator opposes them. That is the policy and tradition of the Judiciary Committee, not simply the chairman's prerogative. Nor is it a pocket filibuster. That is a phony term. Yet, these nominees were unconfirmed and are, therefore, lumped into this category. So are nominees who were not confirmed in the Congress during which they were nominated and President Clinton chose not to renominate. That was his choice, not mine. For these and other reasons, the vast majority of President Clinton's unconfirmed nominees did not make it all the way through the confirmation process for reasons having nothing to do with my chairmanship of the committee.

Now, there are always, at the end of every Presidency, those nominees who are put up too late, where you could not get the FBI work done or you could not get the investigatory work done or you couldn't get the ABA report done or there were nominees who had problems in their FBI reports. There were further reasons nominees could not make it at the end of President Clinton's term. I might add that is true of every Presidential term that I recall in my 32 years in the Senate. It is also true that I put through nominees that my side had a lot of angst over because I believed, as I always did in my chairmanship, the President had the power of nomination. We had the power to vote, up or down, against those nominees. So I brought up people who caused a lot of angst on our side because I believed the President deserved that—unlike some on our side who have been very badly mistreated. I will cite Peter Keisler as a perfect illustration.

So I had to come here and set the record straight once again. Some judicial nominees of every President are not eventually confirmed. My friends on the other side of the aisle returned more than 50 unconfirmed judicial nominees to President Bush at the